

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1810 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT

Versus

MER KANA RINABHAI DIVRANIYA & ORS

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Appearance :

MR IM PANDYA APP for Appellant

MS NK ANANDJIWALA for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 07/05/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the Judgment and Order delivered by Fourth Fast Track Court and Additional Sessions Judge, Junagadh, on 6th of April, 2004, in Sessions Case No. 150 of 1998, whereby all the three present respondents being accused of the said Sessions Case came to be acquitted for the charges levelled against them under Sections 302 and 114 of the Indian Penal Code as well as under Section 135 of the Bombay Police Act.

2 In this Appeal, Record and Proceedings from the Trial Court is called for and learned APP Mr. I.M. Pandya for the State and learned Advocate Ms. N.K. Anandjiwala for the respondents are present. Both the learned counsels submitted that this Appeal was required to be heard finally as Record and Proceedings was available with the Court. Both of them assured that copies of the evidence and the documents would be supplied by them for ready reference. Request made by the learned counsels was accepted.

3 In view of above, Leave to Appeal is granted and this Appeal is Admitted. Learned Advocate Ms. Anandjiwala waives for all

the three respondents.

4 Now, according to prosecution case, complaint came to be filed by Goganbhai Khimabhai Mer, resident of village Divraniya, before PSI R.J. Barot of 'B' Division Police Station, Junagadh. Accordingly, the incident occurred on 22nd of May, 1998 at about 00.30 to 00.45 hours at village Divraniya. According to the informant Goganbhai, ordinarily, near the dairy of the village where a pan stall is situated, village persons were gathered at night and they sat late at night. On the day of the incident, there was a marriage occasion in Harijan Vas, situated near said pan stall and people gathered near the pan stall including the informant were watching the said marriage ceremony. Some village females were fetching water from the water tank situated at some distance. One person Sarman Manga, who is witness in this case, informed the complainant that some quarrel is going on ahead the pan stall in the darkness, and some persons were beating one person. Therefore, complainant Goganbhai, Sarman Manga and Parpat went towards the location from where, according to Sarman, shouts were heard. Going towards there, near the dela of Rana Patel, complainant found that his friend Hamirbhai Bhimabhai was lying in bleeding condition and with the light of match stick, he discerned that deceased Hamirbhai Bhimabhai had wounds in the chest, on head

etc. He was appearing unconscious and, therefore, one rickshaw was called and he was shifted to Junagadh Hospital. In the way, brothers of deceased were taken in the rickshaw. It was found that, on the mouth of the deceased, on the head, etc. there were blows of axe and dharias. His skull was badly injured. He was declared dead in the hospital at 5.30 hours. Complaint was offered by the complainant before PSI Mr. Barot. Thereafter, the said complaint was recorded at Vanthali Police Station at 7.35 hours.

5 The incident was registered at Vanthali Police Station as Crime Register No. I-81/98. The investigation, at the first instance, was entrusted to In-Charge Police Inspector of Vanthali Police Station Mr. Bhatt and thereafter to regular PSI of Vanthali Police Station Mr. Khimjibhai Siyabhai Bharai who investigated the offence and submitted the charge sheet before the Trial Court. Thereafter, the case was committed to the Court of Sessions and was registered as Sessions Case No. 150 of 1998. The learned Sessions Judge framed charges against all the three accused on 23rd of January, 2004 vide Exhibit-7. All the three accused pleaded not guilty and, hence, the prosecution tendered its evidence. Prosecution examined seven witnesses and produced documentary evidence on record. After the evidence was over, statements of each of the accused were recorded by the learned Sessions

Judge under Section 313 of the Code of Criminal Procedure, wherein in total denial of the evidence of prosecution, the accused stated that they were framed in false case. The learned Trial Judge thereafter heard the prosecution case and defence, and came to the above conclusion of acquittal of all the accused and, hence, this Appeal.

6 According to prosecution case, there were eye witnesses to this incident, and those were, Mohan Fogabhai, Sarman Manga, Abha Gaga, Jiva Bhima and Bhima Pola. Out of these eye witnesses, Mohan Fogabhai, Goganbhai Khimabhai (Complainant) and Jiva Bhima had expired while prosecution did not examine Bhima Pola and only eye witness Sarman Manga was examined.

7 Learned APP Mr. I.M. Pandya for the State and learned Advocate Ms. N.K. Anandjiwala for the respondents were heard at length.

8 This being an Appeal against the acquittal, though the learned Judge for the reasons given in the judgment, reached to the conclusion of acquittal, but we have carefully gone through the Record and Proceedings and the evidence recorded during trial thoroughly. We have scanned the evidence and the reasons assigned

by the learned Trial Judge for the acquittal. In acquittal appeals, as per the established law, the interference is possible only when it is found that the reasons given by the Trial Court for the acquittal are against the weight of the evidence and are perverse. Therefore, we have re-appreciated the evidence to examine the reasons of acquittal given by the Trial Court as under :

8.1 There is no dispute so far as the culpable homicide is concerned in respect of deceased Hamir Bhimabhai, and his postmortem was conducted by PW-1 Dr. Girishkumar Lakhabhai, on 22nd of May, 1998 at about 8.30. There were six external severe injuries on the dead body and relating internal injuries. There were fractures of occipital and parietal bones of the head. According to PW-1, who is examined at Exhibit-14, those injuries were antimortem and were possible by the weapons by muddamal articles shown to the witness like axe, sphere, etc. According to the Doctor, the death was due to the injuries and shock on account of injuries on vital organs i.e. brain. PM Note is placed at Exhibit-15.

8.2 PW-2 Audhabhai Chanabha, Exhibit-17, is examined as a panch of panchnama of scene of offence, placed on record at Exhibit-35. The panch has not supported the prosecution case though he

admitted his signature in the panchnama. He was declared hostile and was confronted by learned APP with the panchnama.

8.3 The Inquest Panchnama is placed on record by Exhibit-18 and the same was admitted by the defence. Exhibit-20 is a panchnama of arrest of the accused which is also admitted by the defence drawn on 23rd of May, 1998.

8.4 PW-3 Vishabhai Pujabhai, second panch of scene of offence panchnama at Exhibit-35. He is examined at Exhibit-28, but he has also not supported the prosecution case.

8.5 PW-4 Asaraf Gafar, examined at Exhibit 29, is panch of discovery panchnama. According to prosecution case, on 25th of May, 1998, at about 11.00 to 11.15 hours, all the three accused jointly made a disclosure statement to discover the weapons used in the crime and thereafter all the three accused led the police and panchas to the sim of village Dhandhusar, and from the garden of Lakhman Meladmer, accused discovered one sphere and two axes. However, this witness did not support this panchnama which is placed at Exhibit-26, though he admitted his signature and he was confronted with the panchnama.

8.6 PW-5, Exhibit – 30, Aasif Sidi Jethva, is second panch of panchnama at Exhibit – 36 in respect of discovery of weapons, but he has also not supported at all to the prosecution case and he stated that on 25th of May, 1998 he was called at Vanthali Police Station and was asked to sign a ready panchnama, which he had signed. He was confronted with the panchnama by prosecution.

8.7 PW-6 Sarmanbhai Mangabhai, examined at Exhibit - 31 is an eye witness of the incident. According to prosecution case, when he reached at the scene of offence, he noticed that deceased and Mohan Fogabhai, both were going together and he had followed them. While deceased and Mohan Fogabhai reached near the dela of Rana Patel, all the three accused came at the scene of offence. Accused No.1 Mer Kana Rinabhai had an axe in his hand; accused No.2 Jivabhai Nathubhai had a sphere in his hand, while accused No.3 Merubhai Siddibhai had also an axe in his hand, and all the three persons started beating deceased Hamirbhai Bhimabhai, and on account of injuries, Hamirbhai Bhimabhai had fallen down on the ground. Since he was frightened, he had run away from the incident thereafter. However, in his examination-in-chief, this witness stated that on the day of the incident, he was sitting near Pan stall, and at about 11'O

clock Goganbhai , Sarmanbhai etc had also come there and were sitting with him. They were sitting there till 00.30 hours and thereafter he had been to his house while deceased Hamirbhai Bhimabhai and Mohan Fogabhai started to leave that palace together. He denied the statements made before the police by him witnessing the incident. Hence, he did not support the prosecution case.

8.8 PW-7 Khimjibhai Siyabhai Bharai is examined at Exhibit- 32. According to him, investigation was carried out in this case by one Mr. Bhatt, In-Charge Police Sub-Inspector, Manavadar, and from him, the investigation was entrusted to him as he was serving at Vanthali Police Station as PSI. First Investigating Officer Mr. Bhatt had recorded the statements of the witnesses and had drawn the panchnama of scene of offence. Thereafter the investigation was entrusted to this witness. The complaint of this case was offered before Mr. R.J. Barot, PSI 'B' Division Police Station, Junagadh. Thereafter the offence came to be registered before Vanthali Police Station. According to this witness, after he took charge of the investigation, he recorded the statements of the eye witnesses and further statement of the complainant etc. A discovery panchnama was also drawn by him as the accused made disclosure statement before two panchas. He had forwarded muddamal to Forensic Science Laboratory and when there

was sufficient evidence he has filed charge sheet.

9 This is all the evidence of prosecution case. Learned Trial Judge in his judgment came to the conclusion that the only so called eye witness had not supported the prosecution case and three eye witnesses had died. Remaining eye witnesses could not be examined by the prosecution to prove its case. According to learned Trial Judge therefore there was no iota of evidence against any of the accused to have caused injuries to deceased.

10 In view of the appreciation of evidence which we have undertaken, as narrated above, it is clear that there is no evidence at all against the accused. So called eye witness is not supporting the prosecution case. Even the discovery of weapons is not proved as panchas of panchnama Exhibit – 36 have turned hostile. However, this panchnama could not properly be established even through the evidence of the Investigating Officer PW-7. In any case, this is a joint discovery at the instance of all the three accused and, therefore, also the discovery is rendered illegal and cannot be relied upon. Except this, there is no other evidence to connect the accused with the crime. In these circumstances, we have no reason to take a different view than already taken by the Trial Court and this Appeal, therefore, is required to

be dismissed.

11 In the result, this Appeal stands dismissed.

(J. R. VORA, J.)

(BANKIM .N. MEHTA, J.)

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